



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 20 January 2022

SUBJECT: House Bill 366/Senate Bill 1604 (Right-of-Way Dedications)—Draft Report
for Review and Comment

The attached Commission report is submitted for your review and comment. It was prepared in response to a request by the Lieutenant Governor and House Speaker that the Commission study Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams. The bill would prohibit local governments from requiring a property owner to dedicate land along an existing public right-of-way as a condition of approving any application made to develop the property.

Local governments commonly condition subdivision approval on dedications and typically do not pay for them. Although the bill would benefit some property owners, it would shift more of the costs of development to other taxpayers. New developments can and often do add to a community's infrastructure needs and costs. By dedicating a segment of property, the property owner bears some of the cost of any new infrastructure construction or improvements created by the change in how the property is used, and the total cost does not have to be borne by the community. As described by a representative of the Tennessee Municipal League at the September 2021 Commission meeting, dedications "reduce the cost to be borne by taxpayers associated with the construction of improvements that are necessary to mitigate the effects of the development." If passed, the bill would effectively require local governments to pay for land that they might have otherwise acquired through dedications without compensating property owners.

Currently, only one state, Massachusetts, has a statute that prohibits local governments from conditioning approval of new subdivisions on dedications of land without

compensating property owners. A few other states have restricted dedications in certain circumstances—such as subdivisions of farmland, subdivisions containing fewer than a specified number of parcels, and based on the gross area of the proposed subdivision—regardless of whether the dedications would pass the *Nollan/Dolan* test. But Tennessee has a long-standing tradition of local control regarding land use regulation, which allows local communities to manage land development in ways that meet their needs.

Because courts have found dedications that meet the *Nollan/Dolan* test are a constitutional means for governments to regulate land use, because new developments can and often do add to a community's infrastructure needs and costs, because dedications can help offset those costs so that they don't fall solely on community taxpayers, and because of Tennessee's long-standing tradition of local control regarding land use regulation, **the Commission does not recommend the proposed legislation.**

Some states have laws to protect property owners' rights while maintaining local authority to require dedications. Five states—Arizona, Colorado, Florida, Minnesota, and Utah—have incorporated the language of the *Nollan/Dolan* test into state statute, which provides guidance to local governments to help ensure that the dedications they require meet the *Nollan/Dolan* test. Although Texas law does not include the “essential nexus” language from the test, it does specify that the dedication should be roughly proportionate to the costs of the development. Additionally, some states go further by requiring local governments to provide a written analysis justifying required dedications.

Based on the actions taken by these other states to protect property owners' rights while maintaining local authority to require dedications and to provide guidance to local governments, **the General Assembly should codify in state law the *Nollan/Dolan* test, the constitutionally-based standard that has been established and applied by the US Supreme Court for dedications.**